



Missouri Department of Natural Resources

Clean Water Commission Water Pollution Control Program

Meeting Minutes

October 22, 2003

MISSOURI CLEAN WATER COMMISSION MEETING
October 22, 2003
Baymont Inn, Lake Ozark, Missouri

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission
Paul E. Hauser, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission

Mike Alesandrini, St. Louis RCGA, St. Louis, Missouri
Michael Bollinger, Ameren, St. Louis, Missouri
Robert Brundage, Mo-Ag, PSF, Princeton, Missouri
Nancy Brunson, Duncan's Point, Edwards, Missouri
Cindy DiStefano, Department of Conservation, Columbia, Missouri
Dave Dillon, Department of Agriculture, Jefferson City, Missouri
Joe Engeln, Department of Natural Resources, Jefferson City, Missouri
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri
Bruce W. Frock, Missing Well Home Owners Association, Clinton, Missouri
Donald Hannah, Clinton, Missouri
Bob Hentges, Missouri Public Utilities Association, Jefferson City, Missouri
Jim Hull, Director of Staff, Missouri Clean Water Commission
Malinda King, Acting Secretary to the Commission, Jefferson City, Missouri
Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri
Chris Koenig, Dawn, Missouri
Angel Kruzen, Water Sentinel-Sierra Club, Mt. View, Missouri
John Lodderhose, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Richard Laux, Department of Natural Resources, Jefferson City, Missouri
Jim Lunan, Holcim (US) Inc., Bloomsdale, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Norb Plassmeyer, Associated Industries of Missouri, Jefferson City, Missouri
Amy Randles, Assistant Attorney General, Jefferson City, Missouri
Gale L. Roberts, Department of Natural Resources, SWRO, Springfield, Missouri
Ted Salveter, City Utilities, Springfield, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
David Shanks, Boeing, St. Louis, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
Robert R. Stephens, Missing Well Homeowners Association, Slater, Missouri
Scott Totten, Department of Natural Resources, Jefferson City, Missouri
Bob Veenstra, URS Corporation, St. Louis, Missouri
Erin Volker, Chillicothe, Missouri

Chairman Herrmann called the meeting to order at approximately 9:10 a.m. and introduced Commissioners Minton, Kelly, Greene and Hauser, Director of Staff Jim Hull; Acting Secretary Malinda King, and Assistant Attorney General Amy Randles. Commissioner Perry and Commissioner Easley were absent.

Mr. Hull reported on the resignation of Diane Waidelich as secretary to the Commission and the Water Pollution Control Program. A resolution was signed by the commission recognizing Ms. Waidelich for her service to the commission and the state.

Mr. Hull introduced Peter Goode as the Engineering Section Chief of the Water Pollution Control Program replacing Randy Clarkson who has retired from the Department of Natural Resources.

Mr. Hull announced to the Commission that in addition to his regular duties Mr. Kevin Mohammadi has been appointed as the Deputy Director of the Water Pollution Control Program.

Chairman Herrmann added his appreciation and welcome to Ms. Amy Randles as legal counsel to the Clean Water Commission.

Administrative Matters

Adoption of September 10, 2003 Commission Meeting Minutes

Commissioner Kelly moved to **approve the September 10, 2003 meeting minutes as submitted by staff**; seconded by Commissioner Minton and passed with Commissioner Greene and Chairman Herrmann abstaining.

319 Grant – Federal Fiscal Year 2004 Request for Proposal and Selection Process

Becky Shannon, Chief of the Water Pollution Control Program Water Quality Section, reported on the selection process for the 319 grants and encouraging different types of projects. Ms. Shannon discussed the procedures that have been used for the last several years and solicited the Commission's input on how to proceed this year. Additionally, a draft of the FY04 319 request for proposals was presented and discussed with the Commission.

Ms. Shannon described how 319 monies were first made available to the states in the past. Missouri had to compete with other states in Region VII for the limited funds that were available to the entire region. Projects were looked at competitively within a state and developed to compete against other states in Region VII. Beginning in the early 1990's, EPA began allocating these funds on a state basis instead of by EPA region. A funding formula is used to determine what amount of the congressional allocated funds should go to each individual state. One of the factors considered is population. Ms. Shannon stated that several different procedures were worked out and fine-tuned. The solicitation process begins with a request for proposals (RFP). The RFP is sent to the people on a mailing list

maintained by the section, to all the Soil & Water Conservation Districts and to NRCS and their local offices. The RFP is also distributed electronically to members of the Water Quality Coordinating Committee. They in turn distribute the information more broadly. The notice of the availability of funds is posted on the department's web site. The RFP and announcement of available funding is distributed at various conferences, meetings and events, announced in several newsletters, resource partners and by way of press release. Ms. Shannon pointed out that we promote the 319 funding and make people aware of its availability throughout the year.

The process includes the opportunity for interested parties to submit a pre-proposal, which is a one-page conceptual discussion of their project. This provides an opportunity to give feedback on what is eligible, partnering opportunities, and ways to strengthen the proposal. The pre-proposals are reviewed and comments sent back to the person who submitted it. A training is also held, inviting everyone who had submitted pre-proposals. The training is announced in the RFP and publicized broadly.

The training involves going over the application form, the process used for selection, the different components of the form and where to find information. Time is also spent on explaining the federal budget and state budget requirements. A fill-in-the blank application form was developed approximately three years ago in hopes that it would be easier for an applicant to complete and also easier to review. Ms. Shannon stated that very positive feedback has been received on the use of this form.

The applications received from the applicants are sent to the members of the interagency review team, listed on page 46 of the Commission packet. A ranking sheet is included so they can conduct an analysis of each project.

Commissioner Minton asked if typically there was one representative from each entity such as one from the Department of Agriculture and one from the Department of Conservation or if there may be more representatives from these various and different entities.

Ms. Shannon answered that typically it is one representative per entity with the exception of the Water Pollution Control Program. WPCP has a TMDL representative, a monitoring and assessment activities representative, and nonpoint source representatives.

Commissioner Minton then asked if the Public Drinking Water Program would also have a representative.

Ms. Shannon replied that yes they did, but that typically the rest of the entities only had one representative.

Ms. Shannon continued, saying that a review meeting is then scheduled. The review team provides an opportunity for the project applicant to meet and speak to the team, titled "Interviews" in the Commission packet. These interviews are extremely helpful in allowing the reviewers to get an accurate understanding of what the project applicant is

trying to accomplish. Ms. Shannon stated that several things are clarified in these interviews and are definitely an enhancement to the project. Following the last interview, the interagency review team, as a group, ranks each proposal high, medium, or low. Any team member who has some interest or involvement in a project abstains not only from voting but also from the discussion of that project. For example, the Outreach and Assistance Center would not be voting on an Outreach and Assistance Center project or be involved in any way in how that project is evaluated. Once the votes have been tabulated, the reviewers can see the ranking that will be submitted to the Commission.

Ms. Shannon stated that at this time comments are solicited from the reviewers for suggestions on ways to improve the project so those issues can be addressed when negotiating the subgrant.

Prior to FY03, staff presented the ranking order of projects to the Commission without knowing how much federal funding is available. Direction had been received from the Commission to go down in order on the list of projects to the extent that funding would allow. Then, when funding availability is known, calculations are done to determine how much money is needed within the department and how many projects on the list can be funded. Ms. Shannon stated that they sometimes work with individual projects to try and reduce their budget in order to fund another project, if that's appropriate. This year the Commission has requested a little different approach.

Commissioner Minton asked when the evaluation is done on the high, medium and low and the Commission knows how they rank out, is it inappropriate for the Commission to know on any given grant proposal how the votes were counted? For example, the Missouri Department of Conservation (MDC) ranks a particular project consistently, one type of project high versus another one low or the Department of Agriculture so the Commission can get a slant on how the various agencies and individuals view the proposal. Commissioner Minton felt that just giving a final score doesn't show how strongly varying groups of people view a particular subject matter. Commissioner Minton asked if it would be inappropriate for the commission to know that MDC and Department of Agriculture rate a particular type of project very low as opposed to another type of project very high.

Ms. Shannon answered that if she could speak from the perspective of a reviewer from previous years, that would make her uncomfortable to know that someone would see exactly how she reacted to the project. Staff do not keep track themselves of who voted or ranked what project high, medium or low. Rankings are tabulated on a board with a show of hands so no one is swayed by any certain individual opinions. Ms. Shannon stated that, from her perspective, they try to maintain some anonymity among the reviewers to some extent.

Commissioner Minton commented that they have been made aware of the fact that there is a certain amount of the money that has to be spent for education and information, typically a certain percentage of the grant money has to be spent in a certain manner. He asked if it would be appropriate for applicants to inform the reviewing team that they want to apply for funding under information and education versus another one that wants to apply under

another category, or a third type of applicant who want to apply 50/50. Commissioner Minton felt it would be helpful for the commission to know if the project was voted on for the technical aspect or hands-on aspect to get a feel for how the projects were prioritized.

Ms. Shannon responded that she felt that could be done. Currently, the applicant identifies whether it's a restoration project or an educational project but they are not evaluated separately. Ms. Shannon asked Commissioner Minton if he was suggesting to put them in two different categories for the purposes of evaluation.

Commissioner Minton replied yes since it's two different pots of money.

Chairman Herrmann commented that he didn't remember Ms. Shannon's explanation of the program from a few months ago specifically, but there were certain percentages of the money that went toward educational programs and certain went to TMDL, and asked if the commission has that breakdown some place.

Ms. Shannon responded that EPA provides new guidance every year. The FY04 guidance has just been received from EPA and can be provided to the Commission.

Chairman Herrmann said he would appreciate Ms. Shannon providing that to the Commission.

Ms. Shannon continued, stating that following the action of the Commission, the department staff put together the grant application. When the grant application is completed, it goes to the department for review and signature and then is sent to EPA. EPA is the authority that determines what can and cannot be funded under the grant, which is the reason they are invited to participate on the review committee. They have the opportunity to review each of the projects for eligibility before the grant application is submitted. Once EPA has awarded the grant the negotiation process can begin with the applicant to develop a fundable subgrant agreement that meets all of the regulatory requirements. Throughout the life of the project nonpoint source staff conducts oversight activities. An initial orientation visit is scheduled with the grant applicant to discuss grant requirements, the kinds of forms they have to fill out, etc. After that visit, yearly monitoring visits are scheduled, in addition to participating in field days, training, etc. Ms. Shannon feels this particular selection process has been effective. Each year, the interagency review team members are asked what can or should be done different or how can the process be improved. Ms. Shannon solicited input of the commission for ideas that could improve this process.

Commissioner Hauser asked how many of the projects EPA has denied in the past that the Commission has approved.

Ms. Shannon responded that in her experience, none.

Commissioner Hauser then asked if there is some flexibility in educational versus harder monies. He stated that he was new to the process last time, and didn't know how the rest

of the commissioners felt. He indicated he would prefer seeing projects that have tangible/measurable benefits that tend to actually improve the water more so than just talk about improving water quality. Commissioner Hauser asked if clean water commission members could participate during the prioritization.

Ms. Shannon responded yes, in fact, Commissioner Perry participated on the FY02 review team and abstained from voting because of her roll as a clean water commissioner. Any members of the commission are certainly welcome to participate in the review process.

Commissioner Kelly agreed that an indication on project preference is needed but would not like to see the balance change. The original balance is satisfactory.

Ms. Shannon recognized from these comments and the ones from previous meetings that the commission is recommending proceeding with this selection process as outlined but that the commission would want to have input in the development of the request for proposals. Ms. Shannon clarified that the commission is requesting that any division of funding would be communicated in the request for proposals, and that each year the commission would provide input on developing priorities on dividing funding, to the extent that EPA guidance will allow, in the draft request for proposals.

Commissioner Kelly asked what the current balance is now that EPA requires.

Ms. Shannon replied that the split is not quite that distinct. EPA has had two pots of money. One is called base funding and the other is incremental. EPA has very tight control over the incremental funding as to how it can be used. The first year it was directed to specific projects of this type, the next year it was directed to specific projects of a slightly different type. This year, it can only be used for development or implementation of watershed-based plans in those watersheds where there is a 303(d)-listed water and represents approximately forty percent of the total funding. The other pot of money is not as carefully directed in terms of the use so the state has the opportunity to use that for high priority waters, information education projects. It isn't required to be used for education. Also the incremental money could be used for education projects if that's part of a watershed-based plan. So it's not a clear "3 million for education, and 2 million for other things."

Commissioner Kelly asked if that means the commission could not choose to grant money only to those that had implementation. She asked if it would be possible that EPA would not approve that.

Ms. Shannon thought they would approve that so long as we were able to do that in the context of their guidance.

Commissioner Kelly asked if they had to have educational.

Ms. Shannon replied no. Watershed-based plans must have an educational component. To the extent that somebody asks the department to fund an educational component of their

watershed-based plan, it may be required under the EPA guidance. This is the first year that watershed-based plans have been in the guidance.

Ms. Shannon said that the Nonpoint Source Management Plan contains priorities for nonpoint source activities; for example, agriculture, abandoned mine land, and urban nonpoint source are the top three. That particular guiding document has always been used for developing the prioritization of funding. The goal to restore waters on the 303(d) list also uses the components of the nonpoint source management plan to establish those priorities.

Commissioner Hauser asked Ms. Shannon how she would like to get guidance and what is she looking for from the commission. Commissioner Hauser thought that just hearing comments from individual commissioners may give some ideas.

Ms. Shannon responded that she personally didn't think this is something that requires formal commission action since it's not a legal issue or a regulatory issue. She suggested that if the commission agrees, the most efficient way would be to routinely provide to the commission a copy of the request for proposals for comments and incorporate those to the extent that EPA guidance allows. The final product would then be provided to the commission.

Commissioner Greene asked if the RFP in the commission packet was up-to-date.

Ms. Shannon replied it is. Draft guidance was received from EPA several months ago informally and nothing significant was changed since that. Staff review of the final guidance found that only a couple of minor wording changes would have to be made in the RFP.

Commissioner Greene asked if Ms. Shannon was recommending the commission review the RFP and submit comments on how they would like to see it.

Ms. Shannon replied alternatively, if the commission would like to direct staff as far as what a specific priority is or priorities that would be fine.

Mr. Hull said that during the last 319 grant process the commission certainly made it well known that they wanted to weigh in on the priorities and the type of proposals they were looking to fund. So, now is the ideal time to provide comments on the next RFP, to make any necessary changes or direction in the next round.

Commissioner Herrmann commented that he had received a giant cardboard box full of applications and thought he was the only one that received them.

Ms. Shannon replied that we began providing those to all commissioners at the request of the commission in 2001.

Commissioner Herrmann thought it would be helpful if the applications were provided on a timely basis to the commissioners. They could provide input as to which projects seemed more worthy of consideration than others.

Commissioner Greene thought that at that point it's too late because the applications have already been sent in. She thought priorities should be set up front in the RFP so everyone knows what is expected from the beginning; otherwise, you have got people that spend a tremendous amount of time. It takes a tremendous amount of time write a grant. Second of all, if the commission is going to judge every proposal, she asked why have a committee do it.

Commissioner Kelly agreed because from what she was hearing they would be down to the wire again with exactly the same thing that happened last time. People are going to look here and there and apparently the priorities of the majority here last time were not the same as those of the people who did the judging.

Commissioner Hauser said he had no problem with either approach. He would have no problems sitting on the committee and actually judging, voting, whatever or reflecting the priorities in the RFP and agreed with Commissioner Greene that the sooner you let people know the better. His preference would be to alter the RFP in favor of those projects that will have a tangible/measurable benefit impact on water quality even when you're spending educational funds. He stated that he guessed short of the RFP being modified, he was announcing his voting preferences now.

Commissioner Greene thought that would be biasing the way the project is looked at instead of looking at the quality of the proposal as a whole. That's why there is a mix of people on the committee.

Commissioner Hauser said that's why there are several votes on this commission so that all those things are represented with the clean water commission ultimately approving these.

Commissioner Greene replied right, but why have a committee if the commission is going to do it all.

Commissioner Hauser said he is not opposed to the commission doing it themselves.

Commissioner Greene said she opposed.

Commissioner Kelly said she opposed also. She said at that point she could foresee a lot of grant writers doing a lot of lobbying which she thought would certainly not be very helpful.

Commissioner Hauser said he was sure that they do now.

Commissioner Kelly said sure, they do, but that specific thing she thought would be wrong. She felt that those with a grant would line up to get their vote and didn't think that was a good idea.

Commissioner Herrmann commented that, based on past experience, if allowed enough time one can think up any kind of a justification for a project to just get the free money, and that's how he has viewed a lot of these projects. He didn't feel this justifies the expenditure of state money and federal monies toward the accomplishment of the task they want. Commissioner Herrmann thought that the RFP should be more definitive as to where the money is going or where it's intended to go.

Ms. Shannon thought that both objectives might be achieved if Commissioner Minton's suggestion of separate evaluation on information/education versus implementation projects is used. The projects could be ranked separately and then the commission could decide at that meeting how much money you want to put in each pot to the extent EPA allows. Ms. Shannon asked if this would be a way to get at the issue.

Commissioner Herrmann thought if they had the requirements of the program, that would work.

Commissioner Greene stated that education is much more than just telling kids. She didn't feel that the majority of people would put a lot of work and effort into a project if they thought it was meaningless.

Ms. Shannon stated that could be seen in the project description.

Commissioner Herrmann stated that he has seen in this program and others that the grant is more for justification for the position of the person who is writing the grant.

Commissioner Kelly commented that the commission should rely on all of the people from the various departments that sit on the group that make the decisions. They have read and reviewed enough grants to determine if a grant is worthwhile. She asked if all proposals had to be rated.

Ms. Shannon said if they are clearly ineligible that is noted on the information provided to the commission.

Commissioner Kelly said that would be the signal that indeed the project wasn't very worthy.

Commissioner Hauser didn't think the projects last year were ranked to spend that money most effectively to actually have the largest impact on cleaning water.

Commissioner Greene stated she agreed with Commissioner Kelly in that the commission should trust the judgement of those who work with water quality every day.

Commissioner Hauser asked why should the clean water commission even vote on the rankings or what projects get funded if that rationale is used.

Commissioner Greene thought they could still look at the projects and express opinions, which might help in negotiation of the budgets. She felt this would be the roll of the commission.

Commissioner Herrmann thought the commission is well within its responsibilities to exercise those prerogatives of review to see that the money is going to the place where it should go in their minds.

Ms. Shannon said that one of the reasons that the interview process is so beneficial to this review committee is that if someone has a question or needs clarification, they can get a response. Ms. Shannon suggested that if the commission wanted to weigh in on the individual projects, the project applicant might ask for the opportunity to come and present just as they do with the review committee so that they can address questions and clarify issues.

Commissioner Kelly recalled that the objections that were raised to some of the items on the last 319 list were not that they weren't going to achieve the effect that the grant writer intended, but rather that individual commissioners favored certain approaches. It's kind of boiled down to whether or not we thought that the education was valuable. She thought the commission should favor the education component because of the long-term effects.

Commissioner Minton thought one of their confusions last time was they didn't have a clear understanding of the division and separation of the monies. They saw education and information projects at the bottom of the list commingled with restoration projects and restoration projects mingled in at the top of the list with educational issues. Commissioner Minton thought the RFP should clarify the priorities so applicants can focus their project. He felt it would be very instrumental and a really good idea if the commissioners would attend the review meetings to hear the discussions between the review committee and the applicant.

Commissioner Minton asked if the commission needs to assess and decide on a cap for projects, like maybe \$400,000. He mentioned that, for example, SALT projects have a cap.

Ms. Shannon answered that a cap is not always going to assure the most accurate budget figure. The commission could put a cap on the amount of the grants or the duration of the grants. The program has developed a 4-year time limit. There have been projects that ranked very high that were far over \$400,000.

Commissioner Hauser felt they should maintain some flexibility and that this would be part of the evaluation process. He then asked when the interviews are scheduled.

Ms. Shannon explained that typically the RFP would have been sent out in July, but that the dates change each year because of various factors including EPA guidance. In the draft RFP it shows that the review panel will be scheduled to meet in March but that would be contingent on getting the RFP within the next week or so.

Commissioner Kelly stated she thought Commissioner Minton's idea had a lot of merit if we could do that, have the two lists.

Ms. Shannon said that evaluating projects separately as Commissioner Minton suggestion can easily be implemented. She pointed out that all 319 projects must have some information education technology transfer component but the primary mission of the project would be what would determine whether we put under information education or implementation.

In answer to the commission's request, Ms. Shannon said that process would be implemented.

The Commissioners agreed to get comments back next week. A copy of the final RFP would then be sent to the commissioners.

319 Grant – Federal Fiscal Year 2003 Application

Ms. Shannon reported that, as has been discussed at previous commission meetings, staff has developed a proposed break out of funding for the FY03 319 grant. Page 63 in the packet shows an outline of what is anticipated to submit to EPA. A partial grant request has been submitted to EPA to allow staff to proceed with the projects from the competitive selection (in the last box on page 63). EPA is currently reviewing that grant request. An amended request will be submitted for the rest of the funding. Page 64 lists the additional projects that the department would like to recommend. The department is trying to address some of the budget shortfalls within the program and looking for opportunities to use all available funding such as 319. The department is asking EPA (and has verbal agreement) to fund much of the TMDL work just for this year. This is because the TMDLs provide a basis for the watershed-based plans.

In reply to Commissioner Hauser's question, Ms Shannon said she is concerned that this could lead to cuts in other funding. She is trying to make very clear that this is for this year only.

Ms. Shannon continued saying at a previous meeting the idea of watershed-based planning grants was discussed. This would be a pot of money that then would be subgranted to applicants for the purpose of developing watershed-based plans that meet the requirements of 319 guidance. This could be helpful in having better quality projects and more eligible projects in future. The grants could be used for providing a funding source for local groups dealing with TMDL issues and for planning. The 319 grant proposal would also provide assistance for outreach and public meetings for TMDLs, as well as for education for stormwater activities. There is a bill in Congress that has been introduced that would

clearly allow use of 319 funds for storm water Phase II activities. Other proposed projects are pesticide activities, which is training relative to water quality protection; poultry litter exchange, which is a web-based exchange program that is already up and running; and project WET, which is a educational program for teachers addressing water quality issues. The projects outlined would use all of the money.

Commissioner Herrmann commented that obviously the FTE is not the principal determinant in the cost.

Ms. Shannon replied that yes, on project WET there is only .85 FTE and yet the cost is significantly higher than one might expect. There are material costs for books and educational materials that provide a big part of that budget.

In answer to Commissioner Herrmann's question, Ms. Shannon said justification for the activities would accompany the grant application to EPA. Also, these funds would be tracked similar to how other subgrants with reporting and monitoring of the expenditures are tracked.

Ms. Shannon said if the commission has no other questions, staff anticipates going ahead with the grant application as described here.

Commissioner Herrmann requested the commission receive a report, which indicates successes and failures of the money that has been spent and what has been accomplished as proposed by the application.

Ms. Shannon said that one of the things that has been implemented for the last 3 years is an attempt to quantify the impacts, at least in the area of nutrients and sediment, to quantify reductions in pollutant load that can be associated with the project. So, for example, if there is an implementation project to reduce phosphorus, the applicant is asked to quantify that using a computer model or whatever technique is appropriate.

In answer to Commissioner Herrmann's question, Ms. Shannon said the commission has not received information on this yet because it information on impacts is not yet available. Staff will provide a report as requested.

Enforcement Referrals

Sun Valley Subdivision

Kevin Mohammadi, Chief of the Water Pollution Control Program Enforcement Section, reported that Sun Valley Subdivision is a mobile home park consisting of 40 homes located in Benton County, Missouri. An unknown number of mobile homes are served by failing onsite septic systems and an unknown number are served by an unpermitted two-cell lagoon. The usage of a septic system was intended only to be a temporary means of wastewater treatment until a centralized sewer system was made available by the developers. Since issuing a construction permit for the construction of two aerated lagoons

on December 21, 1994, only one two-cell lagoon has been constructed. The department has conducted 4 site inspections and Notices of Violation have been issued to the developers for operating without a Missouri State Operating Permit. Several efforts to resolve this matter have been made but to date the owners have refused to address the noncompliance.

Berry Hurst, representing Sun Valley Subdivision, was present with his partner, Glen Baine. Mr. Hurst explained that this piece of ground was purchased in 1986 and developed over a period of 14 years. The Department of Natural Resources had requested he put in a centralized sewer system. Benton County and Henry County health departments issued permits for the purchasers of the lots to put in their own sewer systems. Mr. Hurst stated that while under enforcement action, he worked with Ogle Hopkins and Jerry Croy, and finally with the Attorney General's Office. The Attorney General had said subdivisions couldn't be created while in violations. Mr. Hurst stated that the letter he received dated October 5 said that he had met all the requirements of an approved method for the wastewater disposal and was authorized to sell or lease lots with any subdivisions. Seventy temporary septic systems have been installed but are not approved. Mr. Hurst said that is why he doesn't have a permit after 16 years. The engineer won't sign the papers while the subdivision is in violation of the law.

In answer to Commissioner Greene's question, Mr. Hurst said the letter was dated in 1994. His copy of the Missouri State Operating Permit said the plans and specifications had been reviewed by the Department of Natural Resources and the design engineer, Western Missouri Professional Engineer, had certified that the plans and specs met all requirements. He indicated that the engineer has been paid but refuses to sign the paperwork. The engineer feels he needs a letter from the Department of Natural Resources stating he is not liable. He explained how he has been trying to solve this problem and finish this project since 1988.

Trying to correctly understand, Commissioner Herrmann asked if the sewer system is in place and available to all lots in the plotted subdivision.

Mr. Mohammadi answered yes.

Commissioner Herrmann asked if the people were choosing to not hook onto the system.

Mr. Mohammadi said that some lots have septic tanks so they are in the middle of the sewer system that's in place. He didn't know whether the centralized sewer system is available to everybody.

Mr. Hurst said that there is a private system on every lot.

In answer to Commissioner Herrmann's question, Mr. Hurst stated that a user fee is not being charged.

Mr. Hurst continued telling of the number of lots and people actually using the system.

In answer to Commissioner Minton's question, Mr. Hurst stated these are the 112 lots.

Mr. Hurst said he is just down to getting the permit with the engineer to send in his papers. He has talked with his partner and met with attorneys to get the issues with this engineer resolved.

Mr. Hurst answered that he has been in dispute with the engineer since 1994.

Commissioner Minton made a motion to refer the matter to the Attorney General's Office. He felt that would encourage everybody to get in a room together to work out a resolution to the matter with Mr. Mohammadi. Commissioner Kelly seconded the motion.

Mr. Mohammadi said there are others present who are concerned residents and wanted to make a statement to the commission.

Commissioner Herrmann suggested Mr. Hurst check with Mr. Mohammadi to ensure he has copies of all his paperwork.

Mr. Bruce Frock, President of the Missing Well Homeowners Association, said that along with Sun Valley and T-Bowl Flats, there are several subdivisions in this lagoon area that we are talking about. Mr. Frock said they have about 21 sewer systems that are currently connected to this lagoon in discussion, or part of the lagoon system. Mr. Frock stated that the engineer has joined the homeowners association and is working with them and DNR to try to resolve this. The health department developers are requiring the purchasers to put in holding tanks. Because of the way they are set up, they can only be used for a couple of years. In Mr. Frock's experience he has found that it won't work without the second lagoon. He was informed when he originally bought his property 8 years ago that it was state approved for mobile home development or campers, with a state approved well and two lagoons. He didn't think he would have to a well or worry about a lagoon system. As time went on things changed. Now they are talking with DNR asking what their options are. Mr. Frock said they would appreciate any help they can get. He felt there are a lot of people out there that are like the development and like the sewer system, if it would work.

Commissioner Herrmann suggested they get written documentation so it becomes a matter of record when it moves forward. The motion states the best way to move forward is to get the Attorney General's Office involved. There is a law now that if a public sewer system is available to a property they are required to hook on. Commissioner Herrmann recalled something similar in Pulaski County.

Mr. Bob Stevens introduced himself as a member of the Missing Well Association and one of the property owners. He has lived there for 4 years and felt that Glen Baine and Berry Hurst have done shabby work and only partially completed any of the projects that they have started on in developing this property.

Commissioner Herrmann asked if there were any other comments or discussion. Commissioner Herrmann said there was a motion on the floor to refer this matter to the Attorney General's Office and asked for Ms. King to call for a vote.

Commissioner Minton moved to **refer this matter to the Attorney General's Office**, seconded by Commissioner Kelly and passed by all commissioners.

Commissioner Herrmann stated that when the Attorney General's Office gets involved in this he might suggest in his area of interest that reference to the registration board for professional engineers, land surveyors, and architects might be a matter of concern.

Watershed Report – State Water Plan

Mr. Joe Engeln, Assistant Director for Science and Technology, Office of the Director, DNR, reported the department is going to shift the focus of the state water plan. His presentation was to bring the commission up to date on what's been done to date and give some idea of what is being contemplated for the future. This is so the commission can make sure that they know what's going on and can provide whatever input they would in terms of steering this next part of this effort. The state water plan is actually completed two phases. The first phase was a topical phase where issues were covered such as state water law, surface water resources, ground water resources, etc. The second phase, which is very near its end, was a phase in which regional assessments were done. One important note in this phase is that there was no judgements or comparisons between river basins; it was a simple presentation of the facts for each basin in the state on a regional basis. All of those reports have been completed except for one. The Eastern Missouri Report is done and is now being revised based on comments from the steering committee. Mr. Engeln was asked by the department director to take leadership in preparing phase 3. The State Water Plan will continue to be a project that is done primarily within the Water Resources Program of the department's Geological Surveying Resource Assessment Division. However, the plan will include a much broader group of contributors. The vision statement, included in the packet, will be amended as more input is received from groups such as the commission, many of our agency partners as well as members of the public, but that is the direction that we are contemplating. The goal is to turn this document into a planning exercise not only for the department but for all of the water concerns within the state. It will collate and coordinate things already being done.

The next phase is considered probably best fit to a regional basis and within the region to work on a watershed basis. However, because of the variation and issues involved, they may focus on a particular interest, water supply problem, or whatever is needed in that particular watershed. One of the things that this clearly builds upon is the agency's work to try to integrate data. Eventually, a product called Arch Internet Map Server will be available to everyone to allow them to create maps of their own watersheds where they can choose what they want to look at and learn various things about their watershed. And, this could be done within programs, across programs within the department and to coordinate these efforts better with our partners. Other agencies felt this as being a very good way of making sure that we are complementing their efforts and making sure that we all

understand what the various groups are doing and how they are contributing to various question about water supply and water quality within the state. In order to get the best information possible, they will reach out to the experts such as the water resources group, programmatic experts, and the local and regional experts that work in these watersheds. Mr. Engeln said that no action is needed today and that he would welcome whatever questions or comments the commission may have.

Commissioner Herrmann mentioned that some of this information described is available in the CARES Program under University of Missouri and asked if that is incorporated into or utilized in this.

Mr. Engeln answered that the CARES group has just finished a second phase of what was called the MOWIAP, Missouri Watershed Inventory and Assessment Program. It was something used in 1998 when they did a very fast watershed assessment. Mr. Engeln said that MOWIAP is the decision making tool on which they want to base this. So, rather than recreate the rule they will work with CARES to make this work better for their purposes and purposes of the partners. Once they have received input from the partners, they may seek funding from EPA.

Mr. Engeln said this is going to be a long-term multi-year project because of several databases within each of the programs. Progress has been made over the last two years. Within the next quarter executive staff will be asked for decisions on three items on how we are going to integrate data. This will also be a large step closer to being able to really exchange data efficiently with the EPA. Mr. Engeln felt that this process would actually get easier once data get incorporated into a single model in an integrated system.

Mr. Engeln said they hope to kick off the first region within the next 6 months with a draft plan perhaps in a year or two after that. Then the plan is to move from region to region. The idea is to constantly revise the plan and renew all this information so that the public and the decision makers actually have the most recent data possible.

Commissioner Minton asked what are the positive aspects that change what the department is doing now. He understands the whole watershed approach but asked what is being coordinated or brought together.

Mr. Engeln answered that it's hard to say who is doing what in each watershed. The more information that is learned and known will help with planning and working more efficiently. In this system, if a body of water is close being impaired, the problem can be handled in a much more user friendly or cost effective way before it gets to that final stage.

Request from Robert Brundage to Discuss Water Quality Trading

Mr. Robert Brundage, reported that he wanted to introduce the topic of Water Quality Trading. He wanted to encourage the commission to gain more knowledge and consider whether or not the Clean Water Commission would want to consider this. Last January, EPA formally announced a Water Quality Trading policy. There has been a draft policy

for a number of years. G. Tracy Mehan, III, the former director of the Missouri Department of Natural Resources, and now is Assistant Administrator of the Office of Water, has decided to push this policy. There has been trading in the air pollution law but water pollution trading is a more difficult concept and harder to implement. With TMDLs and the 303(d) list taking a much bigger role in water policy the last five years, water quality trading is taking on added importance. Mr. Brundage explained that it's easy to look at an impaired watershed and ask them to remove more pollutants from the stream just because they have a permit. It's becoming more and more expensive for wastewater treatment facilities to add more technology in order to obtain water quality standards for cleaner water. At some point its more cost effective to look to other sources of those pollutants, nutrients for example. The voluntary incentive-based approach has been used for years to reduce the amount of nonpoint source pollution. Now there is an opportunity to create an additional incentive for nonpoint sources to put more practices on their land to reduce nonpoint source pollution and to be able to quantify those and get paid. A point source would go buy a credit from another source that is reducing the same pollutant in that same watershed. They could go buy that credit for fifty cents on the dollar that it would cost them to do the improvement. So, if they had to do an improvement for one hundred million dollars at their wastewater treatment plant and they can go out and buy credits from another source to reduce those pollutants at a cheaper cost, they are saving money. At the same time more and more pollution is being moved from that watershed. Some states are trying to move forward with this. EPA has tried pilot projects to implement water quality trading in watersheds around the country but are not very far along on this process. Mr. Brundage said he would encourage a dialogue between the DNR Staff and the Clean Water Commission concerning this topic and hoped to see the topic on an upcoming commission meeting. Mr. Brundage offered to facilitate a discussion on Water Quality Trading. He felt this policy would help DNR staff to deal with TMDLs on nonpoint sources.

Commissioner Minton commented, as described, it would be a lengthy process and there would obviously have to be extensive monitoring on the nonpoint source sites that you were trading to. Impacts to the resource to water quality in the receiving stream would have to be determined prior to trying to lower their levels to offset the impacts of the point-source. He thought that would require extensive monitoring. He asked Mr. Brundage if he had insight to whether the other states are permitting the nonpoint source that was developing the credits.

Mr. Brundage said this would have to be discussed at length. He thought that DNR would have to write a permit that allows water quality trading and the point source would have a contract with the nonpoint source. The monitoring part is basically done through computer modeling and through research that has been done. When you do trading you are normally not trading one for one because there is uncertainty about the reduction of pollutants from nonpoint sources. There needs to be a margin of safety to make sure when allowed to do trading that there is going to be actual pollutant reductions. Those are built in to the whole trading process and how credits are set up.

Commissioner Hauser commented that he thought this concept offered some potential. He thought the effect would clean up water more quickly.

Commissioner Minton thought it deserved exploration.

Mr. Hull commented that the department is actively researching this issue. It does have issues that need to be thought through.

Commissioner Herrmann asked if staff could give the commission an acquaintanceship with the subject and a status report by the next meeting.

Mr. Hull thought that would be possible.

Mr. Brundage offered to give that presentation.

Duncan's Point/Pebble Creek

Mr. Hull responded to concerns expressed at the last meeting by Ms. Nancy Brunson about the Pebble Creek Subdivision and its wastewater treatment facility in Lake of the Ozarks, Missouri.

In regard to the land disturbance activities, it was noted in a complaint inspection performed on December 18, 2001, followed up by a Letter of Warning (LOW) issued January 3, 2003, that a land disturbance permit was necessary and needed to be obtained. A General Permit for storm water (land disturbance activities) was issued on March 22, 2002. As stated in the report on the inspection of the subdivision performed September 30, 2003, (a copy of which was contained in the commission packet) this is a standard permit requiring certain best management practices (BMPs) to be adhered to. The report recommends that these BMPs must be installed to control storm water and sediment runoff during all construction activities. The Water Pollution Control Program (WPCP) agrees with the concerns and will take appropriate steps to address the deficiency commensurate with the violation.

To the concern that the application contains deficiencies, Mr. Hull stated that the WPCP agrees. The application for the Pebble Creek Wastewater Treatment Facility was originally received on June 19, 2002, and was reviewed by engineering staff in the former Jefferson City Regional Office. With the closing of the JCRO, the application was reassigned to the Southwest Regional Office (SWRO). As a result of the SWRO's engineering review of the application, certain deficiencies were found and a comment letter was sent to the applicant on September 26, 2003. A copy of which was included in the commission packet. However, it should be noted that the program has previously received documents, which comprise both the engineering document and plans and specifications, as required by the regulations.

In response to the concern of the draft permit being renoticed five times and proper notification not being given to the residents of Duncan's Point, Mr. Hull said that all information relative to the permit application has been open for public review from the day the application was received. Ms. Brunson had in fact made several trips to the department's central office to conduct a file review. All existing documents related to the proposed facility were made available at the times of her scheduled visits.

The draft operating permit for the Pebble Creek Subdivision was distributed for public review for a 30-day period starting August 16, 2002. On September 13, 2002, the permit was placed on public notice again for another 30-day period, due to a correction in the facility's address by the applicant. It was placed on public notice again on January 31, 2003, to announce that a public hearing was scheduled for March 6, 2003. It was placed on public notice again on March 7, 2003, to announce that the public hearing was being rescheduled for May 5, 2003, and would be held at a different location. (This rescheduling and hearing location change was done at the request of Ms. Brunson.) During each public notice period the draft permit was again distributed for public review. All persons who expressed an interest in receiving a draft of the permit were provided a copy. Notices of the draft permit were also posted at six locations at and near the proposed subdivision. The public hearing on the draft permit was held in Kansas City, Missouri. The Kansas City location was chosen in an attempt to accommodate a number of people who owned property at Duncan's Point but live in the Kansas City area. The newspaper notice of the hearing was posted on April 18, 2003. The posting was 27 days prior to the hearing date. Ms. Brunson was concerned that the posting was not made 30 days in advance of the hearing as required by rule. The department believes that the distribution of the public notices through direct mailing to interested parties, the physical postings in the Duncan's Point community and the numerous postings on the department's web page in combination with the newspaper announcement served as adequate public notice of the hearing.

Another concern was the Engineering Report/Environmental Impact Report. As stated above, the WPCP considers that the appropriate engineering documents have been submitted as required by regulation. As far as environmental impact reports, Mr. Hull believed an environmental impact statement (EIS) was what's being referred to. The department nor the WPCP conducts EISs. EISs are completed by federal agencies pursuant to the National Environmental Protection Act (NEPA). EISs are only prepared when a federal entity proposes to do a "major federal action significantly affecting the quality of human environment." As far as Mr. Hull knows, there is no "major federal action" in the instance of Pebble Creek. Even if there were, the federal agency involved would be the one to prepare the EIS. The program's authority to conduct any environmental review is through the NPDES permit application process and the 401 water quality certification process. If and when the program receives a completed 401 certification application, it will evaluate how the proposed project will affect water quality. In addition, the proposed system is a septic tank followed by a re-circulating sand filtration system. These types of systems use proven standard technology and have been extensively used in many locations and have shown the capability to provide adequate treatment to meet Water Quality Standards established by the Clean Water Commission.

In regard to the concern of not getting information on the possible expansion of the facility, Mr. Hull stated that the application is for a certain size facility and is designed to treat a certain amount of daily flow. The addition of more homes than it is designed for would require a modification of the permit and an expansion of the facility.

To the question of how do the subdivision regulations apply to this facility, Mr. Hull said that the report of inspection performed on September 30, 2003, indicates that the developer must apply for and receive subdivision approval from the program.

In regard to the concern of open burning, Mr. Hull stated the developer was issued a Letter of Warning from the department's Air Pollution Control Program on April 28, 2003, for burning minor amounts of lumber. Since that time, to the program's knowledge, nothing has been burned that would require an open burning permit. An open burning permit is required for the burning of a construction or trade waste. An open burning permit is not required in most rural areas as long as the type of waste being burned is tree trunks, tree limbs, and vegetation from land clearing operations when the burning takes place outside the city limits of any incorporated area or municipality and it is being burned at least 200 yards from the nearest occupied structure. The department does not enforce local "no burn orders." It should be noted that the two homes Ms. Brunson mentioned during her presentation at the September commission meeting having been burned happened several years ago and was not connected to the present subdivision land clearing and open burning activities.

To the concern of the location of the proposed wastewater facility and creation of a nuisance, Mr. Hull replied that the regulations governing the review and issuance of wastewater permits do not grant the program the authority to address nuisances created by the location chosen by the developer for the wastewater system unless the nuisance is related to the quality of the discharge. Those locational requirements the program does have the authority to address are contained in the September 26, 2003, comment letter issued by the SWRO.

In response to the historic issues associated with the entrance road, Mr. Hull said those issues are beyond the authority of the Water Pollution Control Program to address and are best suited to be addressed by the department's State Historic Preservation Office (SHPO).

To the concern of availability sessions held prior to the public hearing, Mr. Hull replied that one hour prior to the beginning of the public hearing was allotted to this activity. Staff was on hand from WPCP and the SHPO to answer questions from members of the public. A copy of the permit application was available for the public to review. There was really not a great deal of information to present; however, as stated above staff was available to answer questions during the availability session.

In regard to the concern of the 106 Review, Mr. Hull stated that Section 106 of the National Historic Preservation Act requires that Federal agencies take into account the effects of their undertakings (the funding, licensing, or permitting of a project) on historic

properties. Federal agencies or their designees, must identify historic properties that may be affected by their undertakings and seek ways to avoid or mitigate these effects.

There is nothing in the statutes or regulations requiring a 106 review. A 106 review is not applicable in the instance of a NPDES permit application review nor by the issuance of the NPDES permit. The issuance of a NPDES permit by a state is a state action not a federal one.

In regard to the concern of partial construction of the wastewater treatment system prior to receipt of a construction or operating permit, Mr. Hull said the program had previously gone on record indicating that no violation of the Clean Water Law exists from the perspective that there are no illicit wastewater discharges occurring at the subdivision. The inspection of September 30, 2003, did confirm that portions of the wastewater treatment system have been constructed (effluent pump units and septic tank units). The septic tank units are being used as holding tanks and no discharges were observed at the time of the inspection. Both the statute and regulations require the issuance of a construction permit by the department prior to the beginning of construction of any portion of the wastewater treatment system. In addition, until the developer receives subdivision approval, the regulations state that he cannot sell or, offer lots for sale. The department will again notify the developer of these requirements and will follow-up promptly with its compliance efforts.

Commissioner Herrmann asked if gray area instances are where a review has been done and everything shows compliance but the permit has not been issued yet.

Mr. Hull explained that sometimes applicants will start construction and they haven't even applied for a permit. It happens sometimes and hopefully not too often.

Commissioner Herrmann restated his question to understand that in instances as Mr. Hull described, the review has been done on the design as to compliance with the regulations but the permit has not been issued yet.

Mr. Phil Schroeder, Permits Section Chief of Water Pollution Control Program, stated that is generally true and explained further. He read from the residential housing development rule that states "If the developer proposes a centralized wastewater collection and treatment system and the requirements of this rule can be considered met, provided that all other requirements of the Missouri Clean Water Law and Regulations can be satisfied and continuing authority in accordance with 10 CSR 20-6.010 will be established prior to the sale or lease of lots or the commencement of construction of residences." The meaning of the words "can be" may be something to focus on and talk about. One thing is to establish whether or not the Missouri Clean Water Law and Regulations can be satisfied. Mr. Schroeder thought that a review would be needed to determine if its technological feasible to do what they are planning to do. If they are proposing standard technology that's been approved many times in the past, it could be an easy decision at that point in time. A review would also need to be made to determine if continuing authority requirements have been established. To answer Commissioner Herrmann's question, Mr. Schroeder said yes,

approval to construct should happen after some review has been done. In some cases, construction has been allowed before the approval of the permit application or permit issuance.

Mr. Hull made the observation the wording in the rule that Mr. Schroeder talked about is a matter of interpretation. Staff may feel it's a proven technology and a small facility so chances are the permit will be issued. The public doesn't feel this makes logical sense. There is some logic to how we maybe have done this in the past, or some logic to maybe how the regulations were written. As the regulations read now, to say the program shouldn't allow any construction of a facility without having a construction permit in hand is probably a fairly significant decision to make.

Commissioner Herrmann asked if the most appropriate action would be to change the regulations.

Mr. Hull said he would like to eliminate grayness.

Mr. Hull said changing the regulations would allow for input into proposed changes and people could voice their opinions.

Commissioner Minton commented that while it may pose an inconvenience on contractors and developers, it eliminates that gray area. It also potentially eliminates future enforcement cases because of failure of compliance and lawsuits by the public who are impacted by the failure of a developer.

Mr. Hull explained that the present situation is difficult for some members of the public to understand, including Ms. Brunson. The different actions being required by different agencies makes the Pebble Creek Wastewater Treatment Facility, the Pebble Creek Subdivision, and the historic issue associated with it a bit of an unusual situation. There are environmental justice issues that have been raised by the Duncan Point Homeowners Association. Due to regulation interpretation, it's been difficult to reach a common understanding of how some of those regulations are applied.

Commissioner Minton asked if they are still proceeding or if there is a cease and desist until the permit is issued and what is the issue.

Mr. Hull said Mr. Bruce Martin, regional director of the department's Southwest Regional Office, assisted with the inspection of the subdivision and is keeping staff informed. The inspection indicates there are certain deficiencies, in which any action would originate out of the Southwest Regional Office.

Commissioner Herrmann asked Mr. Martin to speak on this issue.

Mr. Bruce Martin, Director of the Southwest Regional Office in Springfield, explained that he and Roy Williford conducted the inspection. Mr. Martin said he was waiting the outcome of the commission meeting to take the next step. The next step will be the

issuance of a notice of violation to the developer for the violations shown in the inspection report. They would begin with a face to face conference, conciliation and persuasion (CC&P) process with the developer. If they comply with the CC&P process construction of the wastewater treatment system would stop at this point until the permit is issued. If not, the next step would be enforcement action with Mr. Mohammadi's group. Mr. Martin thought a face to face meeting with the developer was needed to go over the report and explain what he needs to do to comply.

In answer to Commissioner Herrmann's question, Mr. Martin has not met the developer and didn't know if would accept this. It is Mr. Martin's intent to follow through with the CC&P as it is required by statute and by procedure.

Commissioner Minton commented that there doesn't really appear to be any egregious offenses associated with the Water Pollution Control Program.

Mr. Hull said in the perspective of Nancy Brunson and the homeowners association, it looks like the developer started land clearing without a land disturbance permit. Following up on a complaint, a letter or warning was issued to get him back into compliance. The developer also started the constructing wastewater treatment system without a permit; he was told he needed to get a permit. He started realigning the road without getting a determination from the Corps of Engineers on whether or not a 404 is necessary which led to the historic preservation issues. There are other issues about constructing a seawall without the appropriate approval of AmerenUE. If each one is looked at separately, they are somewhat minor, depending on your viewpoint. But if added all together, it may seem like a willful pattern of either neglect or trying to avoid the requirements of the law; but is also seen as the department is not concerned.

Mr. Martin added from a field perspective construction without a permit is not often seen in the southwest Missouri region. If they receive a citizen complaint that somebody is constructing without a permit they are issued a notice of violation. The CC&P process is started and an effort is made to get them to comply with the statute and regulations.

Mr. Martin thought the reason for this is the delay in getting the permit issued in a timely way. Time is money to developers. Sometimes they don't plan very well and allow enough time for the permitting process.

Commissioner Minton said the commission requested this presentation but asked if a recommendation for proceeding was needed.

Mr. Hull said if he could make a recommendation to the commission, he would let Southwest Regional Office follow through and take whatever appropriate action they need in order to get compliance and resolve the inspection. The Southwest Regional Office has the application, which is under engineering review. Deficiencies have been found that need to be corrected to meet all the requirements of the law and regulations in order to reach a determination of whether or not to issue a permit. Mr. Hull said with all the

changes of the public notices and hearings there could be enough changes to the application that would warrant another re-notice of a draft permit.

Mr. Hull said even though Mr. Martin's plans are to get the developer into compliance with the laws and regulations and CC&P, the homeowners association may not agree with this recommendation because they feel that we really haven't done our job up till now. And, Mr. Hull admitted that there is a piece or two that hasn't been done as good as it should have.

Commissioner Minton said there is a process and procedures to go through and there are always two sides to every coin. He thought it would be a mistake to circumvent the process.

Mr. Hull explained that reaching a decision regarding this particular application has not been timely but there have been extenuating circumstances. There have been public interest and involvement and several attempts to schedule a hearing. The developer is getting anxious for a decision so they can proceed with the subdivision and sell homes. Mr. Hull said he would recommend that the commission allow staff to do their proper jobs. They want to make sure it's right before the permit is issued or denied.

Commissioner Minton asked if guidance is wanted from the commission on this issue and the issue of the rule language. He asked if staff could give a presentation at the next commission meeting. He asked if it would go through a rule making process or what happens from this point, and how to clarify and determine how that language is addressed in the future.

Mr. Hull recommended to be allowed to approach this with a timeline of how to propose to make that rule change and let that process go through and provide the opportunity for every side to comment.

In answer to Commissioner Minton's question, Mr. Hull said it would require rule change.

Mr. Hull stated he would like to pursue changes so when it is read there would be no question on the meaning.

Commissioner Herrmann said it may not be the appropriate time in the calendar year to consider rule changes.

Mr. Hull said since there are some other changes to the regulations that involve other activities that we want to pursue, it would make sense to put all these together in a package.

Commissioner Minton asked if there was enough guidance to continue.

Mr. Hull said there was. He will revise his presentation to make sure he has the 2002 date in there versus 2003 and make sure the commission gets copies with the minutes.

Whole Body Contact Use Designation

Ms. Shannon reported that Whole Body Contact Use Designation and a draft memorandum of understanding regarding the evaluation of waters for designation for that use has been discussed at the last two commission meetings. As directed by the commission a meeting has been scheduled with interested stakeholders to discuss an approach to use in dealing with Whole Body Contact Designation from Missouri's waters. Since the last commission meeting there has been a suit filed against EPA by the Missouri Coalition for the Environment. The complaint addresses various water quality standards issues in addition to Whole Body Contact.

Ms. Shannon stated the meeting is scheduled for this Friday (October 24, 2003). Representatives of different industries and groups have been invited to come to discuss this issue through a facilitated discussion. The meeting is Friday afternoon at 2:30 and members of the commission are welcome to attend. Ms. Shannon said the meeting location is in the Jefferson Building in the 13th floor conference room.

Commissioner Minton asked if the environmental working group would participate in the discussions since they are involved in a lawsuit.

Ms. Shannon said she asked that question and they said yes. While they could not make any concessions about what they would or would not agree to as far as the outcome of the lawsuit, they intended to come to the meeting and speak frankly about their concerns and what could be done.

Mr. Hull said that EPA also plans to attend the meeting but are unsure on the amount of participation since they are the recipients of the suit. He said his expectations from the meeting would be some sort of agreement with a consensus on what could be done up front versus the schedule proposed in the MOU.

Commissioner Minton stated his understanding of having the stakeholder meeting was because of Mr. Ted Heisel's concern of little or no input or perspective from the environmental groups. He understood the meeting would be held prior this commission meeting, within a sixty-day timeframe, so they would have the opportunity modify Commissioner Perry's motion and coordinate modifications of the MOU with EPA to better suit the concerns of the public at large. Commissioner Minton said if he was with an environmental working group he would feel frustrated. He said since the last commission meeting he has had time to reflect and has questions, like what exactly is the department's position, is the Department of Natural Resources in favor of postponing working through this MOU or does the department want the direction, guidance of the commission, to list all the water bodies in the state.

Commissioner Minton continued saying he thought that the commission had the concurrence of the department. He couldn't understand why the department would spend the time working with EPA to develop a MOU and then be in a position after filing of the lawsuit to immediately role over and decide to list all the streams.

Mr. Hull clarified that the MOU concept is not abandoned.

Commissioner Minton said he knew that but was just asking questions.

Mr. Hull said it has not been sixty days since the last commission meeting and it takes time to get everyone together. He again said the MOU is not abandoned. He was hoping that some logic could be seen to not listing everything at once.

Commissioner Minton concurred.

Mr. Hull said there would be some logic in listing a large number of water bodies then again it would make sense to not list some. Some are obviously not used for whole body contact and some are still in question. He was concerned about the ramifications of listing a water body as fishable/swimmable whole body contact. For example, if a small municipality is discharging into that stream and has to disinfect, additional costs are added to that community in doing so. If it's not necessary, then they are having to spend extra money to treat unnecessarily or they would have to go through the analysis to prove that it wasn't used for that particular kind of activity to get off the list. It is more difficult to get off the list than to get on the list. Mr. Hull noted that there is a lot more interest in our streams today. If some kind of consensus can be reached through the stakeholders, maybe the Coalition of the Environment could reach an agreement with EPA through a consent judgement on how to go about doing that instead of putting them all on the list.

Commissioner Minton apologized but just wanted to make sure that the stakeholders truly feel involved in this process because Mr. Heisel was frustrated. He asked how EPA felt since the lawsuit has been filed. He then said maybe this shouldn't be discussed since a lawsuit has been filed.

Ms. Amy Randles, Assistant Attorney General, stated there are a lot of legal issues, strategy issues and negotiating and suggested it might be better to discuss this in closed session. She said anything discussed in public waives any privilege of questions directed to her.

Commissioner Minton said he had some questions to ask in closed session but added that the stakeholders are to stay involved in the process.

Mr. Hull asked is there was anything else for open session.

Commissioner Herrmann didn't think there was.

Section 640.035, RSMo

Mr. Schroeder asked if he should proceed with this issue since Commissioner Perry had requested this presentation and is not present today.

Commissioner Herrmann asked Mr. Schroeder to go ahead the presentation.

Mr. Schroeder explained that some corrections made in the department's analysis of this statute and wanted to be sure everyone had the correct copy. He noted that Chapter 640 applies to all activities of the Department of Natural Resources, including those programs other than the Water Pollution Control Program. In fact, that statute in that chapter talks about other environmental agencies like the Department of Conservation so this is a very broad statutory application. This presentation is about only those thoughts of the Water Pollution Control Program with respect to implementation or fulfillment of that statute. The Water Pollution Control Program administers the clean water law and the rules and regulations of the Clean Water Commission pursuant to that law. Under section 640.035 the department is required to maintain records of compliance with such statutes, rules, or terms or conditions of any permit on any entity subject to regulations on environmental control. This section also states that the department shall specifically record in such records any actions taken by the entity subject to regulation by the program that are above and beyond what is minimally required for compliance if the entity provides written notification of such actions at or before the time of inspection. Mr. Schroeder addressed two basic elements of the statute. One, it requires that some record be made of compliance, and second, it talks about making a specific effort to record any written notification to the department that there has been an action taken by a regulated entity that is above and beyond what is minimally required by regulation. The department typically maintains records on all of its inspections as well as any findings pertaining to violations noted during those inspections. The department also tracks compliance with previously sited violations and records when violations have been fully corrected. Furthermore, the department staff notes all actions associated with the abatement of a violation. These records are kept in a general file on any specific entity and are generally open for public review. Accordingly, the department maintains records on these entities of compliance using the recording process just described. With respect to the above and beyond compliance aspect, records are kept on entities actions that are above and beyond compliance when the law, of the law, when the department is notified in writing by the entities that those actions were taken. Now the department does not create a special record for that information. In other words that information, or any time we are notified of above and beyond compliance actions that the entity believes it has taken, if it is received in writing it will go into a general file on that entity. In accordance with the language of the statute the department is only required to maintain records of an entities actions that are above and beyond what is required by law when the entity has notified the department in writing prior to or at the time of an inspection. It should be noted that regulated entities rarely notify the department in writing of actions above and beyond what is minimally required. Information is received verbally, indirectly or incidentally, when talking to entities about their compliance actions but no special note is made when that information comes. In summary, Mr. Schroeder believed that the department, or the Water Pollution Control Program specifically, is in compliance with the statute in the way of records keeping. Records are open for the public to review in most cases. If there is some litigation going on, obviously, there may be some restrictions; otherwise, Mr. Schroeder thought the department is in compliance. He asked if there were any questions. He suggested that if Commissioner Perry had any questions after reading the minutes of the meeting, he could answer those at the next meeting.

Closed Session

Commissioner Greene moved to **go into closed session** at approximately 12:30 to discuss legal, confidential or privileged matters under section 610.021, personnel actions under section 610.021, subsection 3, personnel records or applications under section 610.021 subsection 13, or records under section 610.021 subsection 14, which are otherwise protected from disclosure by law; seconded by Commissioner Minton and unanimously passed.

Open Session

Commissioner Kelly moved to **reconvene the open session** of the meeting at approximately 1:30 p.m.; seconded by Commissioner Hauser and unanimously passed.

Isolated Wetlands and the SWANCC Decision

Scott Hamilton of the Water Pollution Control Program's Water Quality Certification Unit, reported that a 401 Water Quality Certification is basically the state certification equivalent of the federal 404 permit, which is permitting and the department is certifying the deposition of fill material into the waters of the United States. Fill material can vary from a culvert in a county road to Bagnell Dam to riprap on a bank stabilization project, as examples.

Mr. Hamilton began with an overview of his presentation.

Background

The jurisdictional scope of the CWA is "navigable waters," defined in the federal statute as "waters of the United States, including the territorial seas."

Waters of the U.S. include:

- (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to ebb and flow of the tide;
- (2) All interstate waters including interstate wetlands;
- (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
 - (i) which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (iii) which are used or could be used for industrial purposes by industries in interstate commerce.
- (4) All impoundments of waters otherwise defined as waters of the United States under the definition;

- (5) Tributaries of waters identified in paragraphs (a)(1)–(4) of this section;
- (6) The territorial seas;
- (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)–(6) of this section.
- (8) Waters of the United States do not include prior converted cropland. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds ...) are not waters of the United States. 40 CFR.230.3(s); 33 CFR 328.3(a).

Migratory Bird Rule

In regulatory preambles, both the Corps and EPA provided examples of additional types of links to interstate commerce which might serve as a basis (under 40 CFR 230.3(a)(3) and 33 CFR 328.3(a)(3)) for establishing CWA jurisdiction over intrastate waters which were not part of the tributary system or their adjacent wetlands. These included use of waters (1) as habitat by birds protected by Migratory Bird Treaties or which cross State lines, (2) as habitat for endangered species, or (3) to irrigate crops sold in commerce. [51 FR 41217 (November 13, 1986), 53 FR 20765 (June 6, 1988).] These examples became known as the “Migratory Bird Rule,” even though the examples were neither a rule nor entirely about birds. This is perhaps appropriate because they were used in a case about isolated wetlands that actually didn’t involve wetlands at all. The Migratory Bird Rule later became the focus of the SWANCC case. The SWANCC decision questions the CWA’s authority over intrastate non-navigable waters, the ANPRM questions the CWA’s rationale for jurisdiction over non-navigable waters. (From federal register)

Riverside Bayview Homes

Previously, in 1985, in the case of United States v. Riverside Bayview Homes, Inc, the Supreme Court ruled that the Corps possessed the authority to exercise jurisdiction over wetlands that were adjacent to other waters, even though the wetlands themselves were not navigable waters-in-fact. The Court deferred to the Corps’ technical expertise on the matter, noting the difficulty in defining the jurisdictional limits. The Court explained the Corps must choose some point at which water ends and land begins. The transition from water to solid ground is not necessarily or even typically an abrupt one, and between open waters and dry land may lie marshes, swamps, and bogs that are not wholly aquatic but nevertheless fall far short of being dry land. The Corps draws the line of jurisdiction at the “Ordinary High Water Mark”.

Characteristic of a jurisdictional stream

The term “ordinary high water mark” means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

SWANCC

In the case of the Solid Waste Agency of Northern Cook County vs. Corps of Engineers (or SWANCC): the Solid Waste Agency purchased a 553 acre site of a former gravel pit.

During the 40 years of abandonment, the ditches present onsite developed into seasonally and permanently inundated ponds that had natural characteristics, and attracted over 121 species of birds. Initially, the Corps did not take jurisdiction over the site because it contained no wetlands. The Corps reconsidered after it was brought to their attention that migratory birds were using the site. The Corps recognized these areas as “waters of the US,” but not wetlands. The Corps refused to issue a 404 permit because they believed this project was not the least environmentally damaging, practicable alternative for disposal of solid waste.

The appeal process then began, ultimately winding up in the Supreme Court. The Supreme Court held that the Army Corps of Engineers had exceeded its authority in asserting CWA jurisdiction pursuant to section 404 over isolated, intrastate, non-navigable waters (under 33 C.F.R. 328.3(a)(3),) based on their use as habitat for migratory birds pursuant to preamble language commonly referred to as the “Migratory Bird Rule.” This reversed the decision of the 7th Circuit Court of Appeals.

Isolation/Adjacency

As a result of this ruling, the individual Corps districts, in the absence of clear guidance, began interpreting the SWANCC decision broadly to nullify jurisdiction over so-called “isolated” wetlands. “Isolation” is the opposite of “adjacent” which is defined in Corps regulations (33 CFR part 328) as:

“bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are “adjacent wetlands.”

ANPRM

The January 15, 2003, *Federal Register* contained an Advanced Notice of Proposed Rulemaking (ANPRM) announcing that the federal government wanted to develop regulations to clarify which waters are subject to CWA jurisdiction especially in view of the SWANCC decision. They note that the Court’s decision may also affect the scope of regulatory jurisdiction under other provisions of the CWA, including programs under sections 303, 401, and 402.

The ANPRM contained two questions:

Whether, and, if so, under what circumstances, the factors listed in 33 CFR 328.3(a)(3)(i)–(iii) (i.e., use of the water by interstate or foreign travelers for recreational or other purposes, the presence of fish or shellfish that could be taken and sold in interstate commerce, the use of the water for industrial purposes by industries in interstate commerce) or any other factors provide a basis for determining CWA jurisdiction over isolated, intrastate, non-navigable waters?

(2) Whether the regulations should define “isolated waters,” and if so, what factors should be considered in determining whether a water is or is not isolated for jurisdictional purposes?

Waters of the State

In reply, the department basically said that Missouri's waters generate interstate commerce via tourism and that all waters of the state are interconnected. Therefore, the degradation or enhancement of any part of the system may impact the whole of the system. The department supported keeping CWA jurisdiction over navigable waters and their tributaries as before, with the addition of allowing connection via groundwater to determine jurisdictional status. This is in keeping with the definition of "Waters of the State" which states "All rivers, streams, lakes and other bodies of surface and subsurface water ... which are not entirely confined and located completely upon lands owned ... by a single person. These also include waters of the United States..."

Recent Rulings

Since the SWANCC decision various court decisions have ruled to narrowly define SWANCC.

In US vs. Deaton, the 4th circuit court affirmed the Corps' authority to regulate wetlands bordering a "roadside ditch" that took "a winding, thirty-two mile path to the Chesapeake Bay." Along the way to the Bay, water flowed from the Deaton's wetlands to the roadside ditch, and then into a culvert on the other side of the road, eventually linking with navigable in fact waters eight miles further. The court stated, "The discharge of a pollutant into a waterway generally has the same effect downstream whether the waterway is natural or manmade."

In Treacy (& US) vs. Newdunn the United States Court of Appeals for the Eighth Circuit reversed the ruling of the district court, ruling in favor of the Corps in their claim over wetlands that are connected intermittently via culvert pipe to navigable waters. The court stated that wetlands adjacent to tributaries of navigable waters is permissible under the CWA because pollutants added to any of these tributaries will inevitably find their way to the very waters that Congress has sought to protect. Mr. Hamilton asked if there were any questions.

Commissioner Minton asked what the ramifications are if a land owner was required to mitigate, through the 401/404 process, an isolated wetland and the Corps and the department have no jurisdiction over that water.

Mr. Hamilton thought that would fall back to a contractual law because the Corps of Engineers requires a contract for the mitigation areas. He believed that would still hold essentially an authority of the contract that would be enforceable.

Commissioner Minton asked if the Corps has the jurisdiction to issue the contract or force the landowner to have a contract in the first place.

Mr. Hamilton said that gets into legal ramifications. When the permit was first issued it would have been a legally binding document. He didn't know where that would leave the agreement if that ruling had been repealed.

Leslie Holloway, representing the Missouri Farm Bureau, took an opportunity to provide information that was submitted by the American Farm Bureau in response to the announcement of proposed rule making. She cited the closing paragraphs in their comment letter, which is a different interpretation from what the department and the Department of Conservation have made in their responses to the proposed rule making. The SWANCC decision clearly limited the scope of federal clean water act jurisdiction to navigable waters and wetlands and other waters that abut those waters of the United States which are subject to the ebb and flow of the tide and or are presently or have been in the past or may be in the future susceptible for use for purposes of interstate or foreign commerce. In 1974, the Corps' intent was to emphasize that it is the water bodies capability of use by the public for purposes of transportation or commerce, which is the determinative factor. We encourage the agencies to reaffirm this position. Ms. Holloway stated there are some other comments pertaining to the questions that were asked in the actual announcement of the rule making, the two questions shown in the presentation prior and also more specific references to the migratory bird rule and the definition of commerce and navigable waters.

Ms. Holloway continued that the whole body contact issue, which is not directly related here, also pertains to the listing process that the commission talked about earlier. She stated they have been in discussions with the departments of Agriculture and Natural Resources and EPA on the memorandum of understanding that was discussed earlier and at the previous commission meeting. She said she understood that the Department of Agriculture was very supportive of moving forward with the MOU and said she would be anxious to hear more about the decision on whether the department is in fact supporting moving forward if that is an issue that has been set aside for now. She understood that it probably wouldn't be addressed in the public session here but that it's something that is of interest to the agriculture community. She indicated she was aware of the stakeholder meetings that are planned, but may not be able to attend because of another commitment on a water quality hearing. She knew that the Farm Bureau and other agriculture organizations are very concerned about what the outcome might be.

Ms. Holloway continued saying the American Farm Bureau had worked with a couple of other organizations on trying to interpret the guidance that EPA issued for states to use in developing the 2002 list and there was some specific mention of whole body contact and how that had been addressed by the guidance that had been issued for the 2002 list. She referred to a report by the National Research Council (NRC) entitled "Assessing the TMDL Approach to Water Quality Management" and issued in June of 2001. There was an assessment of the use of use attainability analyses (UAA's) as relates to Whole Body Contact and fishable and swimmable waters. The NRC report recommends that designated uses be as specific as possible so that waters can be assigned uses that are appropriate to their characteristics and that the general fishable and swimmable goals of the Clean Water Act constitute the beginning rather than the end of appropriate use designation. For example, a sufficiently detailed designated use might distinguish between beach use, primary water contact recreation, and secondary water contact recreation. The NRC report also encourages states to recognize that it may not be appropriate to assign a designated use based on a condition that was present before a water body was altered by a

development. Of 15 states interviewed by the General Accounting Office (GAO) in 2001, 8 acknowledged that their designated uses required revision. For example, all waters in Virginia and Texas are designated for swimming even though some of those waters are inaccessible and too shallow for swimming. The findings of the NRC and GAO reinforce the recommendations included above that states address water quality standards issues associated with modifying designated uses, statewide criteria, and site specific criteria before placing waters on 303(d) lists.

Commissioner Herrmann confirmed that the commission did get a copy of comments from the American Farm Bureau.

Budget and Legislative Discussion

Mr. Scott Totten, Director of the Water Protection and Soil Conservation Division, reported that the 2005 budget request was transmitted to the Governors Office by October 1st as required by state statute. He stated that the 2004 general revenue budget is much less than in previous years and currently there is a 6% withholding. The division is looking available funding in order to refill positions that have been vacant for a long time. Three staff have left the Water Pollution Control Program and as Mr. Hull mentioned earlier one of those was refilled with Peter Goode. Mr. Goode attended the training on Water Quality Trading in Chicago. He also has a background in the Air Pollution Control Program doing air emissions trading and banking. He helped set that up in Air Pollution so his expertise will be helpful over the Water Pollution arena in helping with that analysis.

The House Interim Committee on Water Quality will meet in Springfield at 10:00 a.m. on Thursday (October 23) at SMSU and on Friday (October 24) at Branson at the Chamber of Commerce at 9:00 a.m. Hearings will be held all day long to hear any citizen input on water quality issues in that part of the state. Mr. Totten stated he testified at the meeting in Jefferson City for about three hours on general water quality perimeters. It was called Water Quality 101 so that everybody would have the same general background, the terminology, the TMDLs, 303(d), water quality standards and beneficial uses, etc. There were a lot of good questions and answers. On the day after the meeting they took a tour of a watershed project in northeast Missouri visiting Clarence Cannon Wholesale Water District and saw some of the source water protection things that were going on in that area to protect that major drinking water source. Meetings are scheduled for the St. Louis area on November 6th and 7th. The agenda was not yet available for those meetings but Mr. Totten stated the commission would receive copies when it becomes available. A report on their finding and recommendations is due to the Speaker of the House by the end of December. Work will begin on the 2005 budget analysis with a new House of Representatives budget analyst. A meeting is scheduled for next week to discuss the division budget. Another meeting will be scheduled the first part of November with the House Interim Committee to start going through different parts of the budget related to auditing. An introductory conference was held with the Office of Inspector General, who will be auditing the State Revolving Fund program.

Other, Including General Public Comment, Discussions or Issues

Mr. Hull brought to the commission's attention that EPA conducted a number of inspections of land disturbance operations in both the Kansas City area and the St. Louis area and issued some administrative orders and penalties for either operating without a permit or violations of not adhering to best management practices at those sites. Mr. Hull handed out a copy of a press release that was issued by EPA. Land disturbance activities in Missouri are certainly an issue of concern and EPA is assisting with enforcement of that particular requirement. This has increased an awareness that land disturbance activities are an area where permits are to be obtained and sites run correctly.

Commissioner Herrmann asked if EPA is working with DNR now since they had not previously informed DNR.

Mr. Hull said EPA promised they would fully coordinate in the future.

Mr. Hull mentioned that a public hearing would be held the evening of October 29 on the Holcim Cement Kiln in Ste. Genevieve County regarding their storm water permit. Prior to the public hearing there will be a tour of the facility and a public availability session.

Mr. Hull mentioned that the appeal hearing of the St. Johns Bayou 401 certification is scheduled for the week of December 8th. The joint meeting of the Hazardous Waste Commission and the Clean Water Commission is scheduled for the morning of December 11 and will be held in the Elm Street Conference Center at the Elm Street Complex. The afternoon will be a formal meeting of the Clean Water Commission. One of the issues to be discussed during that joint session is the status of the Risk Based Groundwater Rule.

Commissioner Herrmann asked for the location of the St. Johns Bayou hearing on December 8.

Mr. Hull stated that information has not been received from the Attorney General's Office and asked that Ms. Randles get that information for the commission.

Ms. Randles replied that she would go back to the office and check on this information and get the information to the Commission.

Mr. Hull stated that the administrative hearing officer is in charge of that appeal process and has not seen anything yet. Mr. Hull reminded the commission that last year EPA announced that funding was available to watersheds and was especially interested in joint endeavors between states. The Upper White River Basin submitted an application in conjunction with Arkansas and Missouri and received a portion of that funding effort. EPA has announced their second phase of that watershed initiative. They have requested \$21 million for this year's initiative for the same kinds of activities. The department has information on the announcement. These proposals are submitted to EPA by the Governor of each state.

Mr. Hull recalled that the program and the commission received a petition to place Bull Creek on the Outstanding State Resource Water designation and was directed by the commission to proceed. This will have to go through the rule making process. Since several landowners in that area are asking for more information about what that means and what effect that might have on them a public meeting will be scheduled in the near future. Mr. Hull suggested the commission may want to attend and listen to some of their concerns and the discussions.

Mr. Hull told the commission that an information sheet was included in their packet to fill out. He asked that they fill out as much information as they felt comfortable in doing. This information was requested by the department to inform citizens on how to contact them direct or at a commission meeting to express concerns or pass along information. Mr. Hull explained that he filled out an information sheet because he is a member of the Land Reclamation Commission.

Mr. Hull reported that one CAFO Stakeholder meeting has been held. This was on changes that Missouri may need to make to bring current regulations in line with the federal rule making. At least one or two additional stakeholder meetings may be needed to further discuss that issue before a draft rule change is brought before the commission.

Mr. Hull mentioned with the tight budget the program is trying to streamline and still be efficient. He felt that some hard decisions will be needed in the future about what to prioritize and do and what to prioritize and not do. He said he would keep the commission abreast of those as decisions as they are made and get input reactions to those. He felt that was part of his job. One of the things that is being looked at very closely is how to determine appropriate discharge limits to be placed in permits. There are several ways but the ideal way is to get real information from the receiving stream that's going to receive the discharge. Find what its water quality is now, how it would be effected by the discharge, estimate what the discharge is going to be and come up with appropriate limits that meet the water quality regulation requirements. Hopefully, both can be met technically and be financially obtainable also. In absence of that information a modeling tool would be used. Sometimes those modeling tools tend to give a worst case scenario and come up with limits that are maybe a little too stringent or may be more costly than need be. The other avenue would be to rely on what the regulations specify and in some cases without knowing what the quality of the stream is like, that might be too lenient in some aspects or too stringent in other aspects. Mr. Hull stated it would be nice to have the amount of staff needed to conduct real water quality studies at each one of the discharges that have permits or that renew permits. Mr. Hull felt that the regulated community and the consulting industry should accept more responsibility in doing those kinds of studies and developing that kind of information that can be used to come up with those limits. He felt that in the long run they will be best served by having that information. He thought it might take a little extra time and may cost a little bit of money but might save money in the long run if it effected the design of the facility. This won't work immediately but would in time with the proper tools, guidance and understanding of why it would be better. Decisions will need made on how to get from point A to point B, the volume of work, the amount of water quality studies that need done, and the amount of water quality review sheets to

come up with discharge limits. Recently, a decision was made to discontinue review of sewer extension requests to the extent that only checks on the capacity of the receiving facility will be received. This will begin around the first of the year. These are reviewed and approved locally and usually submitted by the municipality, who uses a consulting engineer. Mr. Hull said it was a tough decision to make but one that may mean somebody besides the department takes on some responsibility for what they are proposing.

Mr. Hull mentioned that besides the change of the added responsibilities for Mr. Mohammadi to serve as acting director of the Water Pollution Control Program, there are other reorganization changes that he is thinking about in the program itself to make it more efficient and make more sense. It has taken him a while to get a grasp on many of the Water Pollution Control Program issues and he said he may not yet know them all now. He stated his position is challenging so he is constantly looking at ways to try to improve how things are done. He said the permit fee will expire in 2007 and a lot of work needs to be done between now and then. He said that one of his goals is to be in a position where the people would be supportive and still want the program to continue doing what they do.

Mr. Hull directed the commission to a letter in the packet addressed to Chris Koenig in response to concerns about Putnam Landfarm. Before Mr. Koenig addressed the commission Mr. Hull stated that a number of site visits were made to the facility. Included with the letter is a summary of what was found, what violations were seen or not seen, and any follow up action that needed done.

Before Mr. Koenig addressed the commission Mr. Hull requested to readdress the earlier issue of the Pebble Creek Wastewater Treatment Facility. Mr. Martin brought attention to rule language on page 3 of the inspection report on the Pebble Creek development. It says that a construction permit is required by 644.051 (2) RSMo, which states that "It shall be unlawful for any person to build, erect, alter, replace, operate, use or maintain any water contaminant or point source in this state that is subject to standards, rules or regulations promulgated pursuant to the provisions of sections 644.006 to 644.141 unless such person holds a permit from the commission, subject to such exceptions as the commission may prescribe by rule or regulation." Further it's mentioned a construction permit is also required by 10 CSR 20-6.010(4)(A). This states that "No person shall cause or permit the construction, installation, or modification of any sewer system or of any water contaminant source, point source, or wastewater treatment facility without first receiving a construction permit issued by the department..." Therefore, these rules may not need to be changed there but there may need to be a change in the rule Mr. Schroeder was referencing so there would clearly be no conflict.

Commissioner Herrmann said the commission had a request from Chris Koenig to talk about the Putnam Landfarms.

Mr. Chris Koenig said he is from Dawn, Missouri, and bought a farm south of Chillicothe in January 2000. Petroleum Landfarm was constructed in May 2000. He showed a picture taken in June 2000 of water going down the hill, into the neighbor's pond and across his property. They have been working with DNR to get it figured out. The permit calls for a

plastic liner, 25,000 cubic yards of soil and no mixing of soil. The paperwork shows DNR did a criminal investigation of Mr. Putnam and found that no plastic liner was there. Mr. Putnam admitted to this. Mr. Koenig said he understood that before any part of the permit can be changed by court order a variance has to be issued by the Clean Water Commission. Stakeholders meetings have been held and now Mr. Putnam has moved from the area. There is no disclosure of the two landfarms that are on the property and the residents around the area of the landfarm are left holding the bag. Mr. Koenig felt that nobody has even tried to help them. Mr. Mike Potter, criminal investigator for DNR, had said that he wasn't surprised there wasn't a plastic liner and he new there wasn't a clay liner as Mr. Putnam has requested in the permit. Mr. Koenig said all they are asking for is an investigation by at least the Attorney General.

Mr. Hull stated he has visited with Mr. Koenig and had been to the Putnam Landfarm site along with several other staff. The Northeast Regional Office has made numerous visits to the facility due to complaints or reports that were investigated. Mr. Hull confirmed that there was a criminal investigation of Mr. Putnam but thought it might not be completely over. The liner issue mentioned was approved by the program to install this without a composite liner or a plastic liner. Mr. Hull stated he had also heard that Mr. Putnam may have left the state. He said he was not an expert on the matter but said they were talking about a landfarm that has petroleum contaminated soil in it. He said he had no knowledge of the material that went in or the information that DNR has but explained that it's hazardous material in the soil that comes out of the hole that a gasoline tank, filling station, or whatever, has leaked out over time. The whole purpose of the landfarm is to treat that soil and get it to where its like clean fill when it's done and over time that happens. That's not to say that these thing are 100% environmentally friendly or nothing could ever go wrong with the environment if the thing wasn't operated completely, 100% correct. Mr. Hull said they have looked into all complaints and felt the response sent to Mr. Koenig lays out what has been done, what can be done, and what can't be done.

Commissioner Herrmann suggested the commission should also hear from Erin Volker.

Mr. Koenig stated that all information has been supplied to them through the Department of Natural Resources' Northeast Regional Office. None is theirs except for the pictures. Mr. Koenig stated that none of the information states what the residents think; it's all based on what DNR has.

Ms. Erin Volker reported that she lives in Chillicothe and is almost a neighbor to Mr. Koenig as well as Mr. Putnam. She felt that public misinformation was the reason for this problem to begin with. She thought this should have been a county zoning issue and DNR should never have been involved. She thought DNR assisted Mr. Putnam in circumventing the local zoning in giving him the permit to do the landfarm. Information from Mr. Hull's office sent to the Sierra Club stated that DNR would not prosecute so they felt like there was no recourse that nothing DNR is going to help us with in regards to Mr. Putnam. DNR had said there is no money for the clean up so that leaves the public assuming that there is no one taking responsibility. Mr. Putnam obviously doesn't have enough integrity to follow through with clean up. One other problem is self-regulation or self testing of

your own soils and trying to monitor what you are doing. As an organic farmer she felt more regulated than Mr. Putnam was and he was dealing with toxic waste. She said they are not talking about just the hydrocarbons that would be dissolved and to reclaim soil to make it good again. She said lead could not be reclaimed nor could many of the substances that are in that soil be reclaimed. Gasoline might be reclaimed but couldn't expose lead to the air and expect it to disappear. She stated she didn't understand why this man was self regulating himself. He is toxic. They turned around and built another gas station on the same site but took an area bigger than a football field of contaminated soil to virgin land, to the farm lands and dumped toxic materials on those lands, 1,000 feet of it. So something needs to be looked at in regards to that. Mr. Putnam has a bad history that can be traced back to almost to 1994 when he cleaned up another gas station. Right now Wal-Mart is dealing with that problem. Criminals continue doing the same practices year after year in whatever state they choose to live in and no recourse by the public. She felt that government agencies should do the job they are paid for. She told Mr. Hull that he needed money to do water quality enforcement more than for doing water quality studies. She said Mr. Putnam's home was listed for sale in the Columbia Realtors Office and stated there is no disclosure on this land.

Commissioner Herrmann asked Mr. Hull if this material has the classification under federal regulations to be classified as non-hazardous.

Mr. Hull replied he believed so but I don't know for sure.

Ms. Randles responded because Mr. Koenig mentioned the Attorney General's Office. She said she had no knowledge of the situation but thought there may be someone in the Attorney General's Office that has been advising this program or the Tanks Section of the Hazardous Waste Program.

Mr. Koenig said the county commissioners wrote a letter to the Attorney General asking for an investigation. He said everything Mr. Putnam owns is for sale. Digging was started on May 3rd and dumping on May 5th. Mr. Koenig stated there is no contact of clay liner in there.

Ms. Volker stated he dug to a so called clay liner, but he was hitting bedrock.

Mr. Koenig said the track hoe could be heard hitting rock. He said it had to be 4-6 foot deep.

Ms. Randles stated that all information is not available once a criminal investigation is started.

Mr. Koenig stated that Mr. Potter told him that he had been trying to get this guy for over 5 years and that sometimes the statute of limitations goes out. Mr. Koenig felt Mr. Potter wasn't doing a very good job if he was really trying to. They complained to DNR about the tanker trucks going in there at 10:00. Mr. Putnam had requested that DNR give him 24 hours notice before they come on the ground for insurance purposes. Mr. Koenig didn't

know how many calls that there was about him pumping water over the side of berms down into his lake.

Ms. Volker stated there was a 2-4 day notice.

Commissioner Herrmann said this is probably a part of the ongoing investigation.

Mr. Hull stated that part of the stuff being talked about is part of the ongoing criminal investigation so he couldn't say anything.

Mr. Koenig said it's not. Not that he knew of or was told.

Mr. Hull said yes, part of it is but some of the concerns talked about have been addressed.

Mr. Koenig stated that Mr. Potter told him that he didn't want to go after little things; he wanted him for the big things. He said little things like the plastic liner was a big thing when his daughter gets up at 2 o'clock in the morning crying because there is a gas smell in her room. He stated that all that documentation is your documentation, not theirs. They have nothing in there.

Ms. Randles said that if Mr. Koenig was already contemplating taking legal action then that should be the subject of a closed session discussion but even a criminal, discussions about criminal actions, depending on the circumstances, can be limited to certain people who have certain certifications. And that information can't be shared.

Commissioner Herrmann said that is not within their jurisdiction or capability. One thing that could be done is that Mr. Hull or the Northeast Regional Office should make a determination for the commission as to the character of this waste in its present state. Then he could perhaps be educated, and maybe the rest of the commission, as to proper activities of landfarming for petroleum wastes. He knows it's done frequently, but thought there was more involved then putting the waste on the earth. He asked for a report at the next commission meeting.

Mr. Koenig reported they are trying to put a landfarm in the middle of the residential area in Millersburg. It has gotten to the point where this guy is telling them he wants \$30,000 and he will pack up and leave. He thought that sounded like blackmail. He said there is another one in Benton County that doesn't have a plastic liner.

Commissioner Herrmann said they will get information from Mr. Hull and perhaps Ms. Randles can tell what she can about the criminal investigation at the next meeting and see where to go from there.

Commissioner Greene asked if the pond was ever looked at for contaminants.

Mr. Koenig replied that it wasn't.

Ms. Volker stated that besides the pond liner, he was also cited for not having proper berms. He then formed berms in the middle of the so-called contaminated soil. DNR's response was not satisfactory.

Commissioner Herrmann state the issue will be fully address at the next meeting and Ms. Volker would be hearing from Mr. Hull on whatever he can say.

Mr. Hull said the next meeting is scheduled for December 11 in Jefferson City.

Commissioner Herrmann said Mr. Brundage has a request to tell us about.

Mr. Brundage passed.

Commissioner Herrmann also had a request from Ms. Nancy Brunson to talk about Duncan's Point Homeowners Association.

Ms. Nancy Brunson said she was here representing the Duncan Point Homeowners Association and took issue of several things that was discussed. One thing of concern is the appropriate procedure. She noticed they said that this particular wastewater treatment plant was pre-noticed six times and it wasn't because of the inconvenience of the Duncan Point Homeowners. It was reissued because adequate notification wasn't received. Not wanting to repeat herself from last month, but she was really surprised that the excuse was because of errors in the application that would have prevented them from having adequate notifications. The information was listed so that other communities would receive notification instead of the immediate surrounding community. She felt this is a real issue and wanted to point that out as a discrepancy. Another thing to look in the handout is that this is a wastewater treatment with a septic tank step system with a sand filtration apparatus but it appears in the particular design that the developer has added a grinder pump station that is not indicated in his application. She asked what the grinder pump station was for. She said this is more than indiscretions that we have had with this particular developer. She wanted someone to explain how 150 feet of force main and these grinder pump stations were installed without a wastewater treatment construction permit. She thought Mr. Hull's office has known this information since September 20, 2002, when someone from his office went out and seen how they install a 150 feet of force main with a grinder pump station. She stated a letter was sent to the developer to cease and desist from putting this particular apparatus in. This developer has now built three more homes and continues to do the same thing. She asked about DNR oversight. She felt they have only received excuses to their complaints. Another point she made was on the 401/404 process. She said that even after repeated requests, DNR has not provided information on new regulations in regard to nationwide permits. They are concerned about the process. She said other residents have tried to call and complain about various different situations at Duncan Point. She said they are regulated to deal only with the Attorneys Office and are concerned about the disparate treatment that we are receiving. She asked if anyone else has to call DNR's Attorney to make a complaint and said when they ask for feed back are told it's Attorney/Client privilege. She noticed they have been treated entirely different since they have been instructed to call the Southwest Regional Office. They took the

complaint and was allowed to remain anonymous. It appeared that they were right on target in terms of the process or the appropriate protocol. She asked for direction on whom to call when they have complaint. In closing, she said they are concerned about the wastewater and where is it going since there are 3 houses occupied and the 4th one almost completed and wondered why they were being treated differently.

Commissioner Greene explained that a notice of violation process is to be started. She stated it was frustrating but by law the conference, conciliation and persuasion process has to happen. Its very frustrating when it comes to these things because it does take a long time to go through that process.

Ms. Brunson stated from reading past commission minutes it seems to take 3 years before they are brought into compliance and she didn't want this to happen at Duncan's Point. This particular area is the designated fishing hole, this is where the fish spawn and it a kind of secluded cove, it's a cove that is dry six months out of the year so they don't want the devastation to the ecology. They would like to prevent a problem before it really starts; this is their life and would really like some intervention.

Mr. Martin reported that he conferred with Ms. Duncan and she conferred with her engineer and he has conferred with his engineer and if the word grinder was replaced with effluent pump unit it will be entirely correct. It doesn't change the outcome of the findings of the inspection report in any way. There is a difference in the type of pump. Mr. Martin said he did not see the pump unit itself when he was out there so it doesn't change the engineering or anything else. Other than that difference Mr. Martin felt that everything else was in order.

Commissioner Herrmann gave the example that if you have got a garbage grinder underneath your sink you have got a grinder pump.

Mr. Martin said that was correct.

Mr. Hull understood that a determination is being made by the Corp of Engineers as to whether or not a 404 Corp permit is required or not. That would include the Historic Preservation issues. To make it clear before the commission, until that determination is made there is no complete 401 water quality certification to act on.

Ms. Shannon stated that is true. The information Ms. Brunson has asked for regarding what goes into a complete application is available on the department's web site. Ms. Shannon apologized for not getting that information to her previously.

Legal Matters

Appeal No. 341 GST Steel Notice of Withdrawal of Appeal

Ms. Randles explained that the next two issues are basically contested cases. The first was initiated by GS Steel Company. They were objecting to specified terms and conditions of certain operating permits and the commission was to hold a hearing and basically before a hearing was held they decided to withdraw their appeal. So this proposed dismissal order that's the first page under tab number 11 of your packet would just accomplish that so there is a clear date when this case is over and they know everything is done.

Mr. Hull explained that resolving this appeal was a result of staff working closely with the company and trying to resolve issues related to the permit.

Commissioner Minton asked if a motion to approve was needed.

Ms. Randles said it would be needed and would be circulated for signature as well.

Commissioner Minton moved to **accept a dismissal of Case number 341**; seconded by Commissioner Greene and unanimously passed.

Appeal No. 375 Glendon Stacy, Jr. 401 Water Quality Certification

Ms. Randles said this is a similar situation. This involved a water quality certification denial that Glendon Stacy appealed and he filed it in May of 2002 but has since dismissed that.

Mr. Hull said it looks like another one resolved and taken care of.

Ms. Randles said this proposed dismissal order would just accomplish a clear date of when this case is over and they know everything is done.

Commissioner Minton stated that this is another one of those situations which brings the urgency of getting the 401 certification process promulgated by rule as previously discussed. It's another one of those where clarification needs to be had.

Commissioner Greene moved to **dismiss Case number 375**; seconded by Commissioner Kelly and unanimously passed.

Mr. Hull recalled to the commission that the department has worked with the Corp of Engineers on trying to gain their acceptance on a number of nationwide permits and if that happens, it will free some staff time in the writing of 401 certifications. A letter has been drafted for the department directors signature to the Corp saying the department would appreciate a decision on whether or not they plan to accept Missouri's conditions and

included some rational as to why it would make good sense. Hopefully, we will soon hear from the Corps that they are going to accept our conditions for those nationwide permits.

There being no further business to come before the commission, Commissioner Herrmann moved to adjourn the October 22, 2003, meeting.

Respectfully submitted,

Jim Hull
Director of Staff